IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 439 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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HARIBHAI RAMBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 439 of 1994

MR BA SURTI for Petitioner.

Mr. KT Dave, AGP for Respondent No. 1

MR YV SHAH for Respondents No. 2-4

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CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 12/04/2004

ORAL JUDGEMENT

The petitioner, occupant of land in question, has preferred the present Special Civil Application under Article 227 of the Constitution of India, challenging the order passed by the learned Special Secretary (Appeals), Revenue Department, State of Gujarat dated 2.12.1993 in

allowing the Revision Application No. SRD-23/93 by quashing and setting aside the order passed by the Collector, Bharuch dated 20th May 1993 and restoring the order passed by the Deputy Collector (Land Reforms) dated 9.11.1992 by which the transactions between the petitioner and the respondents No. 2 to 4 herein are declared as invalid under Section 73-A of the Bombay Land Revenue Code and imposing penalty of Rs. 30,000/=.

2. It is the case of the petitioner that by agreement/document dated 10th June 1958 the petitioner had purchased the land in question from father of respondent No.2. However, on death of his father the name of respondent No.2 was mutated in the Record of Rights on 15.10.1971 and thereafter on the basis of some statement before Talati-cum-Mantri by the respondent No.2 as well as the petitioner by Entry No. 1149 dated 21.10.1971 the name of petitioner was entered into the Record of Rights with regard to land bearing Survey No. 295 Paiki admeasuring 2 acres and 22 gunthas of land. From the bare reading of the statement before the Talati-cum-Mantri which was given by Maganbhai Bhanabhai Vasava, the respondent No.2 herein on 20th October 1971 it is clear that only 1/2 portion of the land which according to him gone to his share from the ancestral property was sold to the petitioner and the same is also not disputed by Shri Surti on behalf of the petitioner.

3. It seems that the transaction between the petitioner and the respondent No.2 and/or between the petitioner and father of respondent No.2 was one between an adivasi and a non-adivasi which was hit by Section 73-A of the Bombay Land Revenue Code (hereinafter referred to as 'the Code') and therefore the Deputy Collector (Land Reforms), Rajpipla issued a show cause notice upon the petitioner and initiated proceedings under Section 73-A of the Code. The petitioner did not remain present before the Deputy Collector and though ample opportunity was given the petitioner had not produced any documentary evidence to prove on what basis he is in possession of the land in question. However from the Entry since it was found that the transaction was hit by Section 73A of the Code and having held by the Dy. Collector that with regard to the land in question provisions of Section 73A are applicable, the Dy. Collector by his judgment and order dated 9th November 1992 imposed a penalty of Rs. 30,000/= and further regranted the land in favour of the original landowner, Maganbhai Bhanabhai Vasava.

4. That being aggrieved and dissatisfied with the

said judgment and order dated 9th November 1992 of the Deputy Collector, the petitioner herein preferred appeal before the Collector, Bharuch being Appeal No. Land 41/92. It was contended on behalf of the petitioner before the appellate authority that as survey settlement had taken place with regard to land within the Rajpipla State the provisions of Section 73-A are not applicable in view of the Government Notification dated 4th April 1961. That the Collector, Bharuch, though having held that the petitioner had not produced any documentary evidence earlier on the basis of which he is claiming possession and though the Entry No. 1149 is not very clear only on the ground that the provisions of Section 73-A are not applicable with regard to land situated within the Rajpipla State, allowed the said appeal by quashing and setting aside the order passed by the Deputy Collector (Land Reforms), Rajpipla.

5. That being aggrieved and dissatisfied with the judgment and order passed by the Collector, Bharuch, dated 20th May 1993 in allowing the same by quashing and setting aside the judgment and order passed by the Dy. Collector (Land Reforms), the respondents No. 2 to 4 herein had preferred revision application before the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad, which was numbered as Revision Application SRD No. 23/93 and the learned Special Secretary (Appeals) by his judgment and order dated 2.12.1993 allowed the said appeal by quashing and setting aside the order passed by the Collector, Bharuch dated 20th May 1993 and restoring the order passed by the Dy. Collector (Land Reforms), Rajpipla. It was held by the Special Secretary in his order that as such there is no transaction with regard to sale at all in existence and the agreement itself is very doubtful. He has also held that considering the Government Notification dated 4.4.1961 the provisions of Section 73A are applicable subject to certain conditions and the said conditions are not applicable with regard to the land in question meaning thereby according to the learned Special Secretary there is no survey settlement with regard to the land situated within the Rajpipla State.

6. That being aggrieved and dissatisfied with the judgment and order passed by the learned Special Secretary (Appeals) dated 2.12.1993, the petitioner had preferred the present Special Civil Application under Article 227 of the Constitution of India.

7. Shri Surti, learned advocate appearing on behalf of the petitioner has submitted that as such there is

already a survey settlement with regard to the lands situated within the Rajpipla State and therefore the provisions of Section 73-A of the Act are not applicable. Therefore, there is no question of taking any prior approval for the land in question. He has therefore submitted that the judgment and order passed by the Special Secretary (Appeals) is required to be quashed and set aside. It is also pertinent to note that even before the revisional authority the petitioner had not remained present. He has further submitted that he has purchased the land by agreement dated 10th June 1958 and his name was entered into the Record of Rights pursuant to the statement given by respondent No.2 on 20th October 1971 before the Talati-cum-Mantri. He has relied upon a judgment of this Court reported in 2001(1) GLH Page 229 in support of his contention that Section 73-A is not applicable and when there is a survey settlement with regard to the land situated in Rajpipla State, for which, according to him the Special Secretary (Appeals) has held that the original survey-settlement under the Bombay Land Revenue Code in Rajpipla was already introduced and therefore Section 73-A of the Code would not be applicable.

8. On the other hand, Shri YV Shah, learned advocate appearing for the respondents No.2 to 4 had supported the order passed by the learned Special Secretary (Appeals) and submitted that this is a petition under Article 227 of the Constitution of India and therefore this Court should not interfere with the finding of fact given by the revisional authority. He has relied upon the affidavit-in-reply filed by the respondent No.2 and submitted that there is no survey settlement in the ex-Rajpipla State in accordance with the Code. He also submitted that the transaction is like the one between an adivasi and a non-adivasi and that in view of the Government Notification dated 4.4.1961 the provisions of Section 73-A are applicable. He has further submitted that the so-called agreement of sale dated 10th June 1958 is a forged document on a stamp paper of Rs. 4 which is not registered at all and there is no explanation given by the petitioner to get his name entered in the revenue record after a long period of about 13 years and therefore he has requested to dismiss the Special Civil Application.

9. Shri KT Dave, learned AGP appearing for the State Government was not clear whether as such the survey settlement has been done with regard to the land situate within the Rajpipla State or not. However, he has submitted that the learned Special Secretary (Appeals)

had in his judgment and order has stated that as the Government Notification was dated 4th April 1961 the provisions of Section 73A would be applicable and therefore he has submitted that the present Special Civil Application may be dismissed.

10. From the judgment and order, which is impugned in the petition as well as the judgment of the Dy. Collector as well as the Collector, Bharuch, it is evident that there is no specific finding given by any of the authorities whether in fact survey settlement is done with regard to the land situated within the Rajpipla State or not and in absence of any finding to that effect it will not be proper for this Court to come to a definite conclusion whether the provisions of Section 73A would be applicable or not. It is true that prima facie the document dated 10th June 1958 does not inspire any confidence. However that is not the question before this Court. Though the respondent No.2 has in his affidavit-in-reply has asserted that the so-called judgment dated 10th June 1958 is a forged document and it is on a stamp paper of Rs. 4 which is not registered at all, but the respondents No. 2 to 4 have never disputed the title of the petitioner before any authority and/or by filing a separate suit before the competent court. I am, therefore, required to go on the basis of the entry No. 1149 as well as the so-called document dated 10th June 1958. However, as stated hereinabove, as there is no specific finding given by any of the authorities with regard to applicability of Section 73-A of the Code and survey settlement with regard to the land in question, i.e. the land situated within the Rajpipla State is done or not, it will be in the fitness of things to remand the matter to the Deputy Collector (Land Reforms), Rajpipla for deciding the question specifically whether the provisions of Section 73-A would be applicable to the land in question and/or whether there was any survey settlement done with regard to the land in question situate within the Rajpipla State or not which was within the ex-Rajpipla State. The matter is, therefore, accordingly remanded with a direction that such an exercise be carried out by the Deputy Collector (Land Reforms) within a period of three months from the date of receipt of writ of this order and decide and adjudicate the said question and conclude the proceedings under Section 73A within the above stipulated time.

11. In view of the facts and circumstances, the petition is required to be allowed to the aforesaid extent. The matter is remanded to the Dy. Collector (Land Reforms), Rajpipla, District-Bharuch to decide the

question with regard to applicability of Section 73A of the Code to the land in question and to decide whether actual survey settlement was done or not in connection with the land in question situate within the ex-Rajpipla State within the time stipulated hereinabove. Rule is made made absolute to the aforesaid extent with no order as to costs. The rest of the orders passed by the Deputy Secretary as well as the learned Special Secretary (Appeals) are confirmed meaning thereby, if the Deputy Collector ultimately comes to a conclusion that the provisions of Section 73A would be applicable and that there was no survey settlement with regard to the land situate within the Rajpipla State, then the order passed by the Deputy Collector (Land Reforms) and the learned Special Secretary would automatically come into operation.

rmr. [ M.R. Shah, J. ]